IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10511 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHESH KIRTILAL BHANSHALI

Versus

SECRETARY

Appearance:

MR VIPUL S MODI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/10/2000

ORAL JUDGEMENT

Rule. Mr.B.Y.Mankad, Ld.AGP waives service of rule for respondents. With the consent of learned counsel for the parties the matter is taken up for final disposal today.

2. The petitioner is a public charitable trust running Gandhi Lincoln Hospital since 1982. There are on an average 80 to 100 indoor and 250 to 300 OPD patients taking benefits of the hospital everyday. In the year 1994 the petitioner had applied and obtained licence to run a blood bank under the Drugs & Cosmetics Act, 1940. The licence was renewed from time and it was last renewed till December 31, 1997. Again, on 8.1.1998, the petitioner trust applied for renewal of the said licence for the period 1998-99 along with challan for Rs.800/-in the prescribed form. The application was sent by Regd.A.D. and was addressed to the Commissioner, Food and Drug Control Administration at Gandhinagar. The petitioner received letter dated 26.7.1999 from the Commissioner informing the petitioner that since the petitioner had not made any application for renewal of licence to run the blood bank for the year 1998-99 within stipulated time, i.e. by 30.6.1998, the licence of the petitioner was not valid after 30.6.1998. The petitioner trust, thereupon, sent representation along with copies of relevant documents. Upon enquiry, it transpired that the application sent by the petitioner was received by the Gujarat State Backward Class Development Corporation as there was a mistake in the address. Instead of Block No.8, Sachivalaya, Gandhinagar the address on the envelop was Block No.5, Sachivalaya, Gandhinagar. The petitioner, thereupon, preferred appeal before the State Govt in the Health Department. During pendency of the appeal, interim stay was granted in favour of the petitioner. Ultimately, however, the appeal came to be dismissed by the impugned order dated 21.9.1999. The petitioner thereafter applied for review of order but by the impugned communication dated 31.8.2000 the State Govt informed the petitioner that there was no power of review. Hence, the petitioner has filed this petition.

3. At the hearing of the petition, the learned counsel for the petitioner has submitted that the time limit for making application for renewal was 30.6.1998 and the petitioner had made application in January 1998 but due to inadvertent mistake in the address the application did not reach the correct authority. It is further submitted that after receiving communication dated 26.7.1999 the petitioner had sent a copy of the application dated 8.1.1998 for renewal along with late fee of Rs.300/- and that in the peculiar facts of this case, respondent No.2 ought to have accepted the application and granted renewal, when the petitioner trust is rendering charitable services to a large number of people in Deesa and surrounding areas.

4. Mr.B.Y.Mankad, Ld.AGP appearing for respondents has submitted that no fault can be found with the authority as the petitioner had not sent the application to competent authority.

5. Having heard the learned counsel for the parties and having regard to the documents on record, particularly, the acknowledgment slip on page 24 of the paper book (at annexure "C" to the petition collectively) it appears that the renewal application was sent to the Commissioner of Food & Drug Control Administration, Sachivalaya, Gandhinagar, unfortunately there was a mistake in the address, i.e. instead of Block No.8, the petitioner had mentioned Block No.5. Since the authorities have not made any allegation about any breach of terms and conditions of the licence nor is there any allegation about any irregularity, the respondent authorities ought not to have rejected the petitioner's application when the aforesaid explanation was offered. Even proceeding on the basis that there was a breach of any relevant provision of law, in the sense, that the renewal application was not sent within time to the correct authority, respondent No.2 ought to have considered the application in proper perspective and granted the same after accepting the late fee.

6. The petitioner shall make a fresh application along with prescribed fee and necessary documents by 6.11.2000 and upon such application being made the respondent No.1 shall take proper decision in light of the above observations made in this judgment within one month thereafter. If there is any deficiency on the part of the petitioner trust, the respondents shall inform the petitioner trust and given them opportunity to make good the deficiency.

7. The petition is accordingly allowed. The impugned order, dated 26.7.1999 passed by respondent No.2 and the order dated 21.9.1999 passed by the State Government (Commissioner, Food & Drug Control Administration) are hereby quashed and set aside and the respondents are directed to consider within one month from the date of receipt, the petitioner's application for renewal of licence for the period 1998-99 and also for subsequent years after accepting the late fee and subject to compliance of other conditions as may be prescribed by law but the application shall not be rejected on the ground that it was submitted late.

8. Since these proceedings had to be initiated

basically on account of the mistake on the part of the petitioner by writing incorrect address, it would be just and proper to saddle the petitioner trust with the costs of this petition which are quantified at Rs.2,000/-.

9. Rule is made absolute in terms of above directions with costs quantified at Rs.2000/-.

17.10.2000 (M.S.SHAH,J)